TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 219.

THE TRAVELERS' INSURANCE COMPANY, PLAINTIFF IN ERROR,

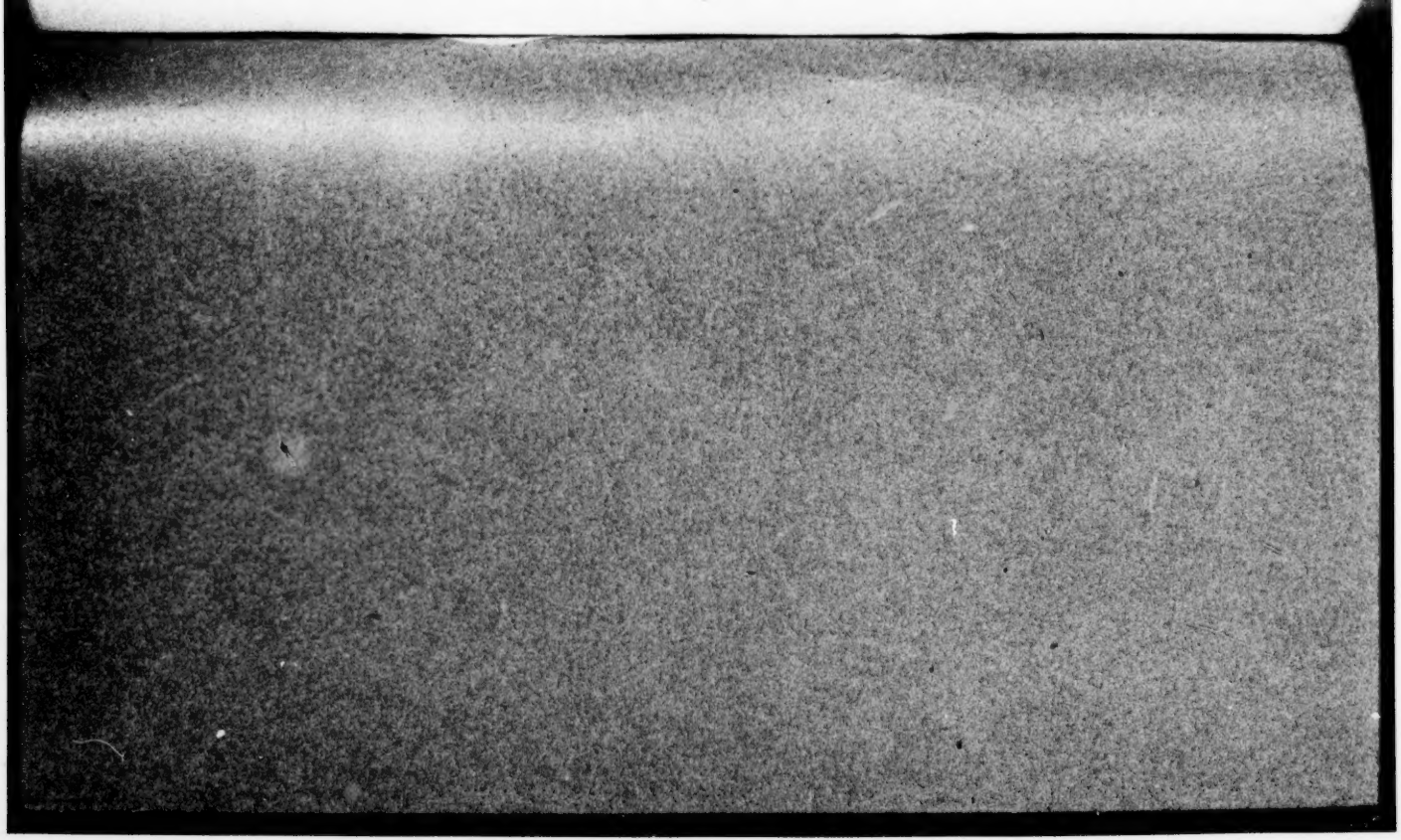
vs.

THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED DECEMBER 31, 1900.

(18,008.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 1, 1901.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of errors of the State of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Travelers' Insurance Company, defendant and plaintiff in error, and the State of Connecticut, plaintiff and defendant in error, where was drawn in question the validity of a statute of or the authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of said The Travelers' Insurance Company, plaintiff in error, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid to the Supreme Court of the United States together with this writ, so that you have the same at Washington on Friday the fourth day of

2 January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the sixth day of December, 1900.

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN,
Clerk of the United States Circuit Court
for the District of Connecticut.

Allowed by—
CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of
Errors of the State of Connecticut.

3 In the Supreme Court of Errors of the State of Connecticut.

THE STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Know all men by these presents that we, The Travelers' Insurance Company of Hartford, Connecticut, principal, and J. G. Batterson, S. C. Dunham, C. G. Munyan, all of Hartford, Connecticut, sureties, are held and firmly bound unto the State of Connecticut

in the penal sum of ten thousand dollars, to be paid to the said State of Connecticut; for which payment, well and truly to be made, we bind ourselves, and each of us and each and every of our several heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this 4th day of December, 1900.

Whereas the above-named, The Travelers' Insurance Company, has prosecuted a writ of error to the United States Supreme Court to be holden at Washington, to reverse the judgment rendered in the above-entitled suit in said court, by the judges of the supreme court of errors of the State of Connecticut.

Now therefore, the condition of this obligation is such that if the above-named, The Travelers' Insurance Company shall prosecute said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be
4 void; otherwise the same shall be and remain in full force and virtue.

THE TRAVELERS' INSURANCE COMPANY,
By J. G. BATTERSON, *President.*
[SEAL.] JOHN E. MORRIS, *Secretary.*
J. G. BATTERSON. [L. S.]
S. C. DUNHAM. [L. S.]
C. G. MUNYAN. [L. S.]

Approved as to form and sufficiency.
CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors of Connecticut.

Filed Dec. 7, 1900.
GEO. A. CONANT, *Clerk.*

The above and foregoing is a true copy of the original bond on file in the office of the clerk of the supreme court of errors of the State of Connecticut, Hartford county, first judicial district.
GEORGE A. CONANT, *Clerk.*

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Connecticut and Charles Phelps, its attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, wherein The Travelers' Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles B. Andrews, chief justice of the supreme court of errors, this sixth day of December, in the year of our Lord, one thousand nine hundred.

CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors of Connecticut.

6 UNITED STATES OF AMERICA:

STATE OF CONNECTICUT, } ss:
County of Hartford, }

I hereby certify that I served the within citation on the within-named Charles Phelps, attorney general, of said State of Connecticut, on the 6th day of December, 1900, at the city and county of Hartford, by then and there delivering to said Charles Phelps, attorney general, personally, a true and attested copy of the within citation.

I further certify that I served the within citation on Huber Clark, secretary of the State of Connecticut, on the 6th day of December, 1900, at the city and county of Hartford, by then and there leaving at the office of the secretary of the State a true and attested copy of the within citation.

Dated at Hartford, Connecticut, this 6th day of December, A. D. 1900.

EDWIN J. SMITH, *Sheriff.*

Fees.

Copies	$1.00
Endorsements	.36
Service	.12
Travel	.50
	$1.98

7 To all people to whom these presents shall come, Greeting:

Know ye that I, George A. Conant, clerk of the supreme court of errors of the State of Connecticut, first judicial district, in and for the county of Hartford in said State, having inspected the files and records in said court in my custody, do find there remaining on file a certain record in a cause wherein The State of Connecticut was plaintiff, and The Travelers' Insurance Company, a corporation under the laws of said State, located at Hartford in said county, was defendant, in the words and figures following, to wit.

Dated at Hartford this 28th day of December, 1900.

[Seal Supreme Court of Errors, Conn.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors of the State of Connecticut in and for the County of Hartford and First Judicial District.

8 Supreme Court of Errors, First Judicial District, March Term, 1900.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Defendant's Appeal from Superior Court, Hartford County.

To the sheriff of the county of Hartford, his deputy, or either constable of the town of Hartford, within said county, Greeting:

By authority of the State of Connecticut you are hereby commanded to summon the Travelers' Insurance Company, a corporation under the laws of this State, located at said Hartford, to appear before the superior court to be held at Hartford within and for the county of Hartford on the first Tuesday of December, 1898, then and there to answer unto the State of Connecticut in a civil action wherein the plaintiff complains and says:

1. The defendant is an insurance company chartered by this State and located in the town of Hartford.

2. On the first day of October, 1898, the secretary of the defendant delivered to the comptroller a sworn list of all its stockholders residing without this State on said day and the number and market value of the shares of stock of said company belonging to each, according to which list the total number of shares of defendant's stock belonging to stockholders residing without this State on said day was eighteen hundred and seventy-eight (1,878) and the market value of each share of said stock on said day was two hundred and fifty dollars ($250).

3. The defendant has never paid any part of the tax payable to the plaintiff from the defendant under the provisions of section 2 of chapter CLIII of the Public Acts of 1897, although said tax was due on the 20th day of October, 1898.

The plaintiff claims eight thousand dollars ($8,000) damages.

Of this writ with your doings thereon make due return.

Dated at Hartford, Connecticut, this 19th day Novem-, 1898.

EDWARD D. ROBBINS,
Justice of the Peace.

9 HARTFORD COUNTY, *ss:*

HARTFORD, CONN., *November* 22, 1898.

Then and there, I left a true and attested copy of this writ, summons, and complaint, in the hands of John E. Morris, secretary of The Travelers' Insurance Company, the defendant corporation.

Attest: S. P. AGNEW, *Constable.*

Fees.

Copies	1.50
End	.24
Service	.12
Travel	.40
	$2.26

Superior Court, Hartford County, January 4, 1899.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Answer.

1. A copy of the return made by the secretary of the defendant, referred to in paragraph 2 of the complaint is hereto annexed and marked Exhibit "A."

2. The capital stock of the defendant is represented by ten thousand (10,000) shares, and, on the 1st day of October, 1898, eight thousand two hundred and one (8,201) shares were owned by shareholders resident in the State of Connecticut, and one thousand seven hundred and ninety-nine (1,799) shares were owned by
10 shareholders resident without this State, and in other States of the United States.

3. All of said shareholders were, on the 1st day of October, 1898, citizens of the United States, and citizens of the several States wherein they respectively reside.

4. The defendant, on the 1st day of October, 1898, had investments in real estate amounting to $1,778,662.05, upon all of which real estate the defendant was assessed and paid taxes.

5. Said real estate, on said 1st day of October, constituted the entire value of said capital stock in excess of $72.13 per share.

6. Chapter CLIII of the Public Acts of 1897 provides for a tax, which is in substance a tax against each of the non-resident shareholders of the defendant, to be paid by the defendant in behalf of said non-resident shareholders.

7. Under the provisions of said act, the taxable value of said stock, held by the non-resident shareholders of this defendant, on the 1st day of October, 1898, to wit, two hundred and fifty dollars ($250) per share, was largely in excess of the taxable value of the stock of the defendant owned by shareholders resident in this State as aforesaid, and the amount thereby required to be paid by said non-resident shareholders as a tax upon each share was largely in excess of the amount per share required to be paid as a tax by the resident shareholders aforesaid.

8. Under the statutes of this State, the assessable value of
11 the shares of stock held by resident shareholders of the defendant, on the 1st day of October, 1898, was determined by deducting from the market value of said shares, to wit, two hundred and fifty dollars ($250) a share, that part of the capital of the defendant invested as aforesaid in real estate; and under the provisions of chapter CLIII of the Public Acts of 1897, the assessable value of the stock held by non-resident shareholders of the defendant on said date was the market value of said stock, to wit, two hundred and fifty dollars ($250) a share, and said non-resident shareholders of the defendant were entitled to no deduction therefrom or exemption

thereon by reason of said investments in real estate, and would thereby be compelled to pay a tax upon each share largely in excess of the amount required to be paid by the resident shareholders aforesaid.

Wherefore the defendant claims that the statute law under which the tax suit sued for in this action is imposed upon the shares of stock held by non-resident shareholders of this defendant is in violation of the 2d section of article IV of the United States Constitution and of the fourteenth amendment to said United States Constitution, in that it is discriminating, unequal, and unjust, and withholds from the assessed valuation of the stock of non-resident shareholders of the defendant the exemption given by the statutes of this State to the resident shareholders of this corporation in the assessed valuation of the shares of the same stock, and requires non-resident shareholders to pay a tax upon each share of stock largely in excess of the amount required to be paid thereon by resident shareholders.

THE TRAVELERS' INSURANCE COMPANY,
By ROBINSON & ROBINSON,
WILLIAM R. MATSON, *Its Attorneys.*

12 EXHIBIT "A."

(Annexed to paragraph 1 of answer.)

I, John E. Morris, secretary of the Travelers' Insurance Company, hereby certify that the list hereto attached is a list of the stockholders of the Travelers' Insurance Company residing without the State of Connecticut on the first day of October, 1898, with the number of shares of said stock then belonging to each, the market value of each share of stock on said day being two hundred and fifty dollars.

All the persons whose names are set forth in said list are citizens of the United States residing without the State of Connecticut, in other States and Territories of the United States, except Sarah S. D'Aubigne and Annie E. Huber, who are represented by agents, and whose citizenship is to me unknown.

This list is submitted in conformity with the requirements of section 3916 of the General Statutes of the State of Connecticut, which statute, as amended by chapter CLIII of the Public Acts of 1897, is, by this company and by its shareholders, deemed to be unjust, unconstitutional and void, and payment of taxes under said statute is now being resisted in the courts, and will again and hereafter be resisted.

(Signed) JOHN E. MORRIS.

To the comptroller of the State of Connecticut.

Sworn to by John E. Morris, subscriber of the foregoing certificate, this 10th day of October, A. D. 1898, at Hartford, Connecticut, before me.

(Signed) SYLVESTER C. DUNHAM,
Notary Public.

13 Stockholder.	No. shares.
Allen, Risley W.	24
Ashley, Edith M.	6
" D. D.	6
" Homer	8
Bunce, Francis M.	27
" William G.	10
" Mary E.	27
" Alice E.	50
Baker, William A.	40
" Catherine P.	7
Bronk, John P.	7
Benoit, Moses A.	8
Carpenter, J. C.	10
Clark, Dr. William B.	4
Chace, Carrie H.	5
Conant, Emily H.	5
Collins, Chas. O.	12
Clark, Chas. L. R.	5
D'Aubigne, Sarah S.	25
Dean, Mrs. Olive J.	23
Eastman, Martha A.	32
Foster, Chas. G.	4
Freeman, Harriette F.	14
Fitts, Geo. H.	5
Goodwin, Jas. J.	8
Goodrich, E. E.	7
Goodwin, Rev. Jas.	8
Hendricks Bros.	25
Forward	412
14 Brought forward	412
Horton, B. W.	4
Holton, Jane L.	57
Huber, Annie E.	20
Holton, Geo. D.	8
Hammond, Martha P.	20
Hoskins, Mrs. Isabel	4
Hubbard, Mrs. Georgiana A.	140
Hotchkiss, Chas. B.	4
Harwood, Minor F.	10
Ives, Lawson C. est.	20
Johnson, Emma A.	11
Jewell, Margaret H.	30
Kellogg, Isabella M.	12
" Clara M.	4
Kendrick, Mary E.	13
Lewis, Enoch	100
Landon, Francis G.	5
" Edward H	6

Landon, H. H.	4
" Mary G.	8
Moore, Geo. D.	24
Merrill, T. B.	50
McEwan, William	24
Moody, Laura A.	40
Martin, Mary B.	5
Nolan, John H.	34
Norton, John H.	2
	1,071
15 Brought forward	1,071
Pullman, Geo. M. est.	50
Perkins, Frances W.	7
Padelford, Maria L.	166
Pirtle, John B.	26
Pitkin, Wm. H.	9
" James S.	9
Porter, Henrietta	25
Park, Geo. M.	3
Prior, Charlotte M.	12
Riley, Lucy M.	1
Riddle, Chas. F.	4
" Althea W.	8
Russell, Elizabeth H.	43
" Wm. H.	20
Smith, John W.	23
" Thomas M. est.	50
Scofield, J. M. est.	4
Sawyer, Geo. C.	20
Shaw, Thomas A.	40
" Maria P.	14
Smith, Thomas S.	1
Scudder, Mary B.	3
Sanger, Mrs. Susan E.	12
Strong, Wm. H. g'd'n.	37
Sawin, Mabel F.	6
Spang, Rosalie	125
	1,799
16 Brought forward	1,799
Valentine, Mrs. Eliza W.	25
White, Charles est.	40
" Julia D.	7
Ward, Harriet S.	3
Warner, Frank C.	8
Way, John L.	5
	1,887

Filed Jan. 4, 1899.
J. LINCOLN FENN, *Assistant Clerk.*

17 Hartford County Superior Court, May 3, 1899.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Plaintiff's Motion to Strike Out, etc.

The plaintiff moves–

1. That paragraphs 6, 7 and 8 of the answer be each struck out as consisting merely of allegations of law and not of allegations of fact.

2. That the last paragraph unnumbered beginning "Wherefore the defendant claims" be struck out as containing no allegations of fact, but merely a matter of argument and propositions of law.

3. That if paragraph 7 be not struck out as hereinabove moved, the defendant be required to make the allegations thereof more specific by stating the amount paid by each of said resident shareholders as a tax upon each share of the stock held by him.

4. That the defendant be required to make the allegations of paragraph 4 more specific and less ambiguous by stating whether by the amount of the defendant's investment in real estate is meant the amount which such real estate originally cost the defendant, or the amount of its market value upon said day, or the amount at which it stood upon the books of the defendant upon said day, and by stating each of the pieces of real estate owned by the defendant on said day together with all data to be alleged about said real estate concerning each piece thereof.

18 5. That the defendant be required to make paragraph 5 more specific and less ambiguous by alleging such facts as will show the relation of the assets of the defendant and the aggregate value thereof and of defendant's capital stock to defendant's real estate and the value thereof.

6. That paragraph 1 of the answer and Exhibit A therein referred to and annexed to the answer be struck out as being neither an admission nor denial of any allegation of the complaint.

THE STATE OF CONNECTICUT,
By CHARLES PHELPS,
Attorney General.

Filed May 3, 1899.

J. LINCOLN FENN,
Assistant Clerk.

Paragraphs 1, 2 & 5, and so much of par. 4 to word "together" in 9th line, granted. Pars. 6 and 3 denied.
May 23, '99.

G. W. WHEELER, *J.*

19 Superior Court, Hartford County, June 27, 1899.

THE STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Substituted Answer Filed in Conformity with the Rulings of the Court upon Plaintiff's Motion for Specific Statement, etc.

Defendant amends the answer by substituting therefor the following:

1. A copy of the return made by the secretary of the defendant, referred to in paragraph 2 of the complaint, is hereto annexed and marked Exhibit "A."

2. The capital stock of the defendant is represented by ten thousand (10,000) shares, and, on the 1st day of October, 1898, eight thousand two hundred and one (8,201) shares were owned by shareholders resident in the State of Connecticut, and one thousand seven hundred and ninety-nine (1,799) shares were owned by shareholders resident without this State, and in other States of the United States.

3. All of said shareholders were, on the 1st day of October, 1898, citizens of the United States, and citizens of the several States wherein they respectively resided.

4. The statute of the State of Connecticut relating to the taxation of the stock of the defendant owned by said resident stockholders on the 1st day of October, 1898, to wit, chapter LXIII of the Public Acts of 1889, is as follows:

Section 3836 of the General Statutes is hereby amended to read as follows:

"Shares of the capital stock of any bank, national banking association, trust, insurance, turnpike, bridge, or plank road company, owned by any resident of this State, shall be set in his list at its market value, in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock in its returns to the assessor."

5. The statute of the State of Connecticut relating to the taxation of the stock of the defendant owned by said non-resident
20 shareholders on the 1st day of October, 1898, to wit, section 2 of chapter CLIII of the Public Acts of 1897, is as follows:

"Section 3916 of the General Statute- is hereby amended to read as follows: The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the 1st day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with

the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

6. The defendant, on the 1st day of October, 1898, had investments in real estate in the following States, upon all of which real estate it was assessed and paid taxes; the number of pieces of real estate situated in each State, with the market value thereof, being annexed thereto, such values being the amount respectively at which said investments in real estate were on the said 1st day of October, 1898, carried on the books of the defendant:

States.	No. of pieces.	Value.
Connecticut	2	$137,965.81
Indiana	50	209,009.68
Illinois	24	91,539.98
Kansas	450	543,017.61
North Dakota	275	161,990.76
Wisconsin	1	780.00
Minnesota	18	87,590.59
Florida	64	255,141.12
South Dakota	8	4,568.00
Colorado	51	202,758.50
Georgia	3	31,000.00
Washington	2	40,000.00
Pennsylvania	1	7,800.00
Ohio	1	5,500.00

7. The market value of the stock of the defendant company on the 1st day of October, 1898, was $250 per share.

21 8. All of the said resident owners of said stock were assessed upon the stock owned by them respectively on the first day of October, 1898, at an assessed valuation equal to the said market value of said stock less a large deduction therefrom by reason of the company's said investments in real estate.

9. The amount per share sought to be collected from the defendant in this action as a tax upon the stock owned by said non-resident shareholders is far in excess of the amount per share paid and required to be paid as a tax by the several resident shareholders aforesaid on the stock owned by them on the said 1st day of October, 1898.

DEFENDANT,
By ROBINSON & ROBINSON AND
WILLIAM R. MATSON,
Its Attorneys.

Filed June 29, 1899.

J. LINCOLN FENN,
Assistant Clerk.

22 Superior Court, Hartford County, July 5, 1899.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Motion to Strike Out.

The plaintiff moves:

1. That paragraphs 4 and 5 of the substituted answer be struck out as containing no allegations of fact.

2. That paragraph 8 of the substituted answer be struck out because the action taken by the assessors of the towns within which owners of defendant's stock reside in assessing such owners upon their stock owned by them on the 1st day of October, 1898, in nowise affects the legality of the action of the State board of equalization set forth in the complaint or the right of the State to recover from the defendant as claimed in the complaint,

3. That paragraph 9 of the substituted answer be struck out because the amount per share paid and required to be paid
23 as a tax by the several resident shareholders in the towns in which they reside on the stock owned by them on October first, 1898, in nowise affects the legality of the tax sought to be collected from the defendant in this action.

THE STATE OF CONNECTICUT,
By EDWARD D. ROBBINS AND
CHARLES PHELPS, *Its Attorneys.*

Filed July 13, 1899.
J. LINCOLN FENN,
Assistant Clerk.

Paragraph 1 granted; paragraphs 2 and 3 denied.
November 24, 1899.

Superior Court, Hartford County, November 24, 1899.

THE STATE
vs.
TRAVELERS' INS. CO.

Memorandum of Decision

Upon plaintiff's motion to strike out, dated July 13, 1899.

Paragraph 1 of the motion allowed, as paragraphs 4 and 5 of the answer simply recite certain public statutes of this State which need not be pleaded. Paragraphs 2 and 3 of the motion are denied. The defendant relies upon the allegations set forth in paragraphs 8 and 9 of its answer to raise the unconstitutionality of the law in question, and to allow this motion would have the effect of not

giving it an opportunity of trying the very question it is now contending for, practically depriving it of its day in court.

RORABACK, *Judge.*

Filed November 24, 1899.
GEORGE A. CONANT, *Clerk.*

24 Superior Court, Hartford County, December 1, 1899.

THE STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Demurrer to Answer.

The plaintiff demurs to the substituted answer because,

1. The answer contains no denial of the allegations of the plaintiff's complaint, and no material allegations of new matter, or matter of avoidance.

2. The tax payable by the defendant under the admitted allegations of the complaint was by law one and one-half per cent. (1½ %) on eighteen hundred and seventy-eight (1,878) shares of defendant's stock owned by its stockholders residing without this State on the first day of October, 1898, at the market value of said shares, to wit, two hundred and fifty dollars ($250) per share, so that under the admitted allegations of the complaint the tax payable by the defendant on or before October 20, 1898, amounted to seven thousand forty-two dollars and fifty cents ($7,042.50).

3. It is immaterial that the defendant had on the first day of October, 1898, investments in real estate upon which it was assessed and paid taxes, and said fact cannot affect the legality of the tax sought to be collected from the defendant in this action, or the right of the plaintiff to recover as claimed in the complaint.

4. It is immaterial at what amount the defendant's investments in real estate were on the first day of October, 1898, carried on its books.

5. It does not appear but that on the first day of October, 1898, the defendant company had assets vastly in excess of its capital and surplus, and it does not appear that any part of its capital was then invested in real estate.

6. It is immaterial that all of the resident owners of defendant's stock were assessed upon the stock owned by them respectively on the first day of October, 1898, at an assessed valuation equal to the market value of their stock less a large deduction therefrom by reason of the defendant's investments in real estate, and said fact cannot affect the legality of the tax sought to be collected from the defendant in this action, or the right of the plaintiff to recover as claimed in the complaint.

7. It is immaterial what amounts per share were paid or
25 required to be paid as taxes by the different resident shareholders of the defendant company on the stock owned by them on the first day of October, 1898, in the various counties,

towns, cities, boroughs and school districts in which they respectively resided, and the fact that such amounts happened to be less than the amount per share sought to be collected from the defendant in this action on the stock owned by its non-resident shareholders cannot affect the legality of the tax so sought to be collected, or the right of the plaintiff to recover as claimed in the complaint.

8. The valuation for taxation of defendant's stock, as well as the stock of other insurance companies and other corporations affected by the same laws, when owned by resident shareholders, is by the laws of this State made by the assessors of the towns within which such shareholders reside, and it is immaterial that such assessors have happened to assess said stock for purposes of taxation at a less value than two hundred and fifty dollars per share, and such action by them cannot affect the legality of the tax sought to be collected in this action, or the right of the plaintiff to recover as claimed in the complaint.

9. The laws of this State do not provide for any deduction from the market value of the stock of the defendant company owned by resident shareholders in assessing said stock for taxation by reason of the investments of said company in real estate.

10. The taxes required to be paid by the resident shareholders of the defendant company, as well as other insurance companies and other corporations affected by the same laws, depend upon the action of the counties, towns, cities, boroughs and school districts in which such shareholders respectively reside, and it is immaterial what taxes were required to be paid by the resident shareholders of the defendant company on defendant's stock owned by them on the first day of October, 1898, to counties, towns, cities, boroughs or school districts in which they severally resided, and the differing amounts per share so required to be paid by different resident shareholders of the defendant company cannot affect the legality of the tax sought to be collected from the defendant in this action, or the right of the plaintiff to recover as claimed in the complaint.

THE STATE OF CONNECTICUT,
By CHARLES PHELPS AND
EDWARD D. ROBBINS,
Its Attorneys.

Filed December 6, 1899.
J. LINCOLN FENN,
Assistant Clerk.

Sustained *pro forma* December 22, 1899.

26 Superior Court, Hartford County, February Third, 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY, a Corporation under the Laws of This State, Located at Hartford.

Judgment.

This action by complaint claiming $8,000 damages, came to this court on the first Tuesday of December, 1898, and thence by continuance to the third day of December, 1899, when the plaintiff made and filed a demurrer to the answer.

The court having heard the parties, sustained said demurrer and found the answer insufficient, *pro forma*, on the twenty-second day of December, 1899. The defendant refused to plead over; and the cause having come to the present time, the court heard the plaintiff and finds it has sustained damages as alleged in the complaint, to the amount of seven thousand five hundred and eighty-six dollars and eighty-nine cents.

Whereupon it is adjudged that the plaintiff recover of the defendant seven thousand five hundred and eighty-six dollars and eighty-nine cents damages and sixty-three dollars and seventy-one cents costs.

By the court:

GEORGE A. CONANT, *Clerk.*

Superior Court, Hartford County, February 9, 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY.

Defendant's Notice of Appeal.

Notice is hereby given that the defendant in the above-entitled cause appeals from the judgment in said cause to the supreme court of errors next to be holden at Hartford on the 1st Tuesday of March, A. D. 1900.

DEFENDANT,
By ROBINSON & ROBINSON,
WILLIAM R. MATSON,
Its Attorneys.

Filed February 9, 1900.

GEORGE A. CONANT, *Clerk.*

27 Superior Court, Hartford County, February 9, 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY.

Defendant's Appeal.

In the above-entitled cause the defendant appeals from the judgment of said court to the supreme court of errors to be holden at Hartford on the 1st Tuesday of March, A. D. 1900, for the revision of the errors which it claims to have occurred in the trial thereof, and for reasons of appeal the defendant assigns the following:

(1.) Because the court erred in sustaining the plaintiff's demurrer to the substituted answer and the claims of law therein made as on file.

(2.) Because the court erred in not holding that the statute law under which the tax sought to be collected in this action was imposed is in violation of the 2d section of article IV of the United States Constitution and of the fourteenth amendment to said Constitution.

Defendant therefore prays for such relief as is provided by law in the premises.

THE TRAVELERS' INSURANCE CO.,
By ROBINSON & ROBINSON AND
WILLIAM R. MATSON, *Its Attorneys.*

I certify that the foregoing appeal was filed on the 9th day of February, 1900, and Lucius F. Robinson, Esq., of Hartford, is recognized in the sum of one hundred dollars, conditioned that the said Travelers' Insurance Company shall prosecute said appeal to effect and pay all costs therein if it shall fail so to do, and said appeal is hereby allowed.

GEORGE A. CONANT, *Clerk.*

28 Superior Court, Hartford County, February 17, A. D. 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY.

I, George A. Conant, clerk of said suprerior court in and for said county, do hereby certify that the foregoing is a true copy of all the files and records in said cause, except such pleadings and papers as were withdrawn.

In testimony whereof, I have hereunto set my hand and the seal of said superior court, at Hartford in said county, this 17th day of February, A. D. 1900.

[Seal Supreme Court, Hartford County, Ct.]

GEORGE A. CONANT, *Clerk.*

29 At a supreme court of errors, holden at Hartford, in and for the first judicial district of the State of Connecticut, on the first Tuesday of May in the year of our Lord one thousand nine hundred.

Present: Hon. Charles B. Andrews, chief justice; Hon. David Torrance, Hon. Simeon E. Baldwin, Hon. Frederic B. Hall, Hon. William Hamersley, associate judges.

May Term, 1900, the 29th Day of October, 1900.

STATE OF CONNECTICUT *vs.* THE TRAVELERS' INSURANCE COMPANY, a Corporation under the Laws of this State, Located in Hartford.	On Appeal from Superior Court, Hartford County.

Judgment.

This appeal by the defendant, claiming error in the record, judgment and decisions of said superior court on questions of law arising in the trial, as may appear in the certified transcript of record on file in this court, was allowed by said superior court on February 9th, 1900, and came to this court at its March term, 1900, and thence by continuance to its May term, 1900, when the parties appeared and were fully heard.

And now this court finds that in the record, judgment and decisions of said superior court there is no error.

30 It is therefore considered and adjudged that the said judgment of said superior court be confirmed, and that the plaintiff recover of the defendant $— costs.

By the court:

GEORGE A. CONANT, *Clerk.*

All which I have caused by these presents to be exemplified, and the seal of the supreme court of errors of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said court at Hartford, in said county and State this 28th day of December 1900.

[Seal Supreme Court of Errors, Conn.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors of the State of Connecticut in and for the County of Hartford and the First Judicial District.

STATE OF CONNECTICUT, *Litchfield County,* } *ss:*

I, Charles B. Andrews, a judge of the supreme court of errors of the State of Connecticut, do hereby certify that George A. Conant,

whose name is subscribed to the preceding exemplification,
31 is the clerk of said supreme court of errors in and for said Hartford county, being the first judicial district of said State of Connecticut, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act-.

I further certify that the seal affixed to said exemplification is the seal of the supreme court of errors, and that the foregoing attestation is in due form.

Dated at Litchfield this 29th day of December, 1900.

CHARLES B. ANDREWS,
Chief Justice Supreme Court of Errors, Conn.

32 The Supreme Court of the United States, October Term, 1900.

THE TRAVELERS' INSURANCE COMPANY, Plaintiff in Error,
vs.
THE STATE OF CONNECTICUT, Defendant in Error.

Assignment of Errors.

Afterwards to wit, on the sixth day of December in the year of our Lord one thousand nine hundred, at the October term for 1900 of the Supreme Court of the United States, at the Capitol in the city of Washington and District of Columbia, comes the said The Travelers' Insurance Company, plaintiff in error, by Lucius F. Robinson and William R. Matson, its attorneys, and says that, in the record and proceedings in the above-entitled cause, there is manifest error in this to wit:

(1.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut under which the State of Connecticut is seeking to collect from the Travelers' Insurance Company taxes assessed upon shares of the capital stock of said company owned by citizens of other States than the State of Connecticut is in violation of article IV section 2 paragraph 1 of the United States Constitution in that it withholds from citizens of other States than the State of Connecticut in the valuation for assessment and for taxation of the shares of stock of the Travelers' Insurance Company owned by them a deduction therefrom allowed to owners of the shares of such stock resident
in the State of Connecticut in the valuation of their shares
33 for assessment and taxation as provided in section 3836 of the General Statutes of said State; said chapter CLIII of the Public Acts of 1897 imposing a tax which, under the decisions of the supreme court of errors of said State and by virtue of chapter 50 of the Public Acts of 1899 of said State is in substance and effect a tax against the owners of such shares resident without said State; chapter CLIII of the Public Acts of 1897, chapter 50 of the Public Acts of 1899, and section 3836 of the General Statutes of Connecticut being as follows:

Chapter CLIII.

"An act concerning special taxes on corporations.

Be it enacted by the senate and house of representatives in General Assembly convened:

Section 1. Section 3915 of the General Statutes is hereby amended to read as follows: The cashier of each national banking association in this State shall, on or before the tenth day of October annually, deliver to the treasurer of the town where it is located a sworn list, of all its stockholders residing without this State on the first day of said October, and the number of its shares then belonging to each, and the market value of such shares on that day, and shall, on or before the twentieth day of the same October annually, pay to such treasurer one and one-half per centum on such value; and any such cashier who shall not comply with the provisions of this section shall forfeit to the town where the association is located one hundred dollars, together with said one and one-half per centum so required to be paid.

Sec. 2. Section 3916 of the General Statutes is hereby amended to read as follows: The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

Approved May 13, 1897.

34 Chapter 50.

"An act amending an act relating to the stock of corporations.

Be it enacted by the senate and house of representatives in General Assembly convened:

Section 1. Section 1923 of the General Statutes is hereby amended to read as follows: When not otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts due to it from him; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator; and if there be none, his heir-at-law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed.

Sec. 2. This act shall take effect from its passage."

Approved April 6, 1899.

"SECTION 3836. Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors."

(2.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of article IV section 2 paragraph 1 of the United States Constitution in that it requires citizens of other States than Connecticut to pay taxes upon shares of stock of the Travelers' Insurance Company owned by them upon an assessed valuation equal to the market value of said shares, and section 3836 of the General Statutes of Connecticut under which such stock is assessed and taxed against residents of Connecticut requires such residents to pay taxes upon an assessed valuation equal only to the market value of said stock less a large deduction therefrom by reason of the real estate owned by the company and upon which it is assessed and pays taxes.

35 (3.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of article IV section 2 paragraph 1 of the United States Constitution in that it requires citizens of other States than Connecticut to pay taxes upon shares of the stock of the Travelers' Insurance Company owned by them far in excess of the taxes required to be paid by residents of Connecticut upon shares of such stock owned by such residents.

(4.) Because the court held that chapter CLIII of the Public Acts of 1897 of the State of Connecticut under which the State of Connecticut seeks in this action to collect from the Travelers' Insurance Company taxes assessed upon shares of the capital stock of said company owned by citizens of other States than Connecticut, is not in violation of the United States Constitution, and particularly article IV section 2 thereof.

(5.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of the fourteenth amendment of the United States Constitution and abridges the privileges and immunities of citizens of the United States in that such statute denies to citizens of the United States residents without the State of Connecticut an exemption granted to residents of Connecticut in the assessment for taxation of the shares of the capital stock of the Travelers' Insurance Company.

(6.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of the fourteenth amendment

36 to the United States Constitution and is discriminating, unequal, and unjust in that it requires the Travelers' Insurance Company to pay taxes upon an assessment of the shares of its capital stock made at a greater valuation than the valuation for assessment of the shares of such stock owned by stockholders of said company resident in said State and under a different rule than that

governing the assessment of shares of such stock owned by stockholders of said company resident in said State.

(7.) Because the court held that chapter CLIII of the public acts of 1897 of the State of Connecticut under which the State of Connecticut seeks to collect from the Travelers' Insurance Company taxes upon shares of its capital stock is not in violation of the United States Constitution and particularly the fourteenth amendment thereto.

(8.) Because the court erred in affirming the judgment of the superior court of the State of Connecticut in favor of the State of Connecticut against said The Travelers' Insurance Company and in sustaining the demurrer of the State of Connecticut to the answer of said The Travelers' Insurance Company as in the record and proceedings aforesaid appears.

Wherefore the said The Travelers' Insurance Company prays that the judgment aforesaid may be reversed, annulled and held for nothing and that it, The Travelers' Insurance Company, may be restored to all things which it has lost by occasion of the said judgment.

LUCIUS F. ROBINSON,
WM. R. MATSON,
Attorneys for Plaintiff in Error.

37 Supreme Court of Errors, First Judicial District, Hartford, May Term, 1900.

THE STATE
vs.
TRAVELERS' INSURANCE CO.

Argued May 1st; decided October 17th, 1900.

38 HAMERSLEY, *J.*:

The defendant claims that the statute law under which the tax sought to be collected in this action was imposed violates the Constitution.

For the purpose of ascertaining our fundamental law the State and national constitutions must be regarded as substantially one ordinance enacted by that body in whom the supreme sovereignty within our limits, is vested.

The reasons urged in support of the defendant's claim, if sound, are really a challenge to the validity of methods of taxation that have existed in this community for 250 years. Our taxation has always been based on the power and duty of the General Assembly, being responsible for the performance of such duty not to the courts but to its constituency, to determine on grounds of public policy the methods by which a fair and politic distribution of the stress of taxation may be accomplished.

Every line of objection raised by the defendant must invoke for its final support the claim urged in its brief that the aphorism, "Taxation shall be uniform and equal" is contained in the Consti-

tution and operates as a limitaton on the power of taxation which this court is bound to enforce. The case therefore practically turns on the existence and authority of such a maxim.

The alleged maxim, in order to control our action, must be found either in some express provision or clear implication of the Constitution. No court can directly set aside an act of the legislature, and the power to indirectly invalidate legislation is one which in the nature of things can exist in the judicial department only under a constitution in the American sense, and is limited by the authority from which it is derived; it is not a power of veto or revision,
39 but purely the judicial power of interpretation. This judicial power is bottomed on the absolute supremacy of the law. In the United States the supreme law is the expressed will of that ultimate sovereignty which has been assumed by the people. All legislation as well as the action of all departments of government must conform to "the supreme original will of the people" as expressed in the constitutions which "form the fundamental and paramount law." Marbury *v.* Madison 1 Cranch 137, 176; Davison *v.* Champlin 7 Conn., 244, 246; Opinion of the Judges 30 Conn., 593.

Since the Supreme Court of the U. S. in the case of Marbury *v.* Madison first announced that the judicial department is authorized to declare a legislative act void, if the rights of parties are affected by a clear conflict between the supreme and subordinate law, that power has been used without question. This is an exercise of the judicial power of interpretation, but an application of that power which was wholly novel. In the interpretation of a settled principle of jurisprudence its meaning as applicable to existing facts may sometimes be made clear by illustrations drawn from universal moral rules that in a way account for all law, and in the interpretation of a statute, historic facts, political and social conditions, may sometimes make clear a doubtful meaning; so similar considerations may at times be proper and necessary in finding the very essence of constitutional limitations. Norwalk St. R'y Appeal 69 Conn., 576, 583; State *v.* Conlon 65 Conn., 478, 489; *In re* Clark 65 Conn., 17, 37 *et seq.* Yet the indiscriminate use in the discussion of these questions of arguments drawn from such sources has undoubtedly induced some practical confusion between the judicial applica-
40 tion of a broad principle stated and the judicial enactment of a principle not stated. The distinction however is radical. One is interpretation, the other is usurpation.

We deem it therefore immaterial whether or not the apothegm "Taxation should be equal and uniform" is sound and ought to be incorporated in our constitution, for whatever our view as to this might be, we should be compelled to hold that unequal taxation by the legislature might be valid, if the sovereign who enacted our fundamental law has seen fit to grant the power of taxation and refused to impose such a limitation on its exercise.

Passing then to the real question—Is there in our fundamental law any express provision or clear implication from provisions therein contained that "taxation shall be uniform and equal"?

There can be no claim that such a mandate is directly ex-

pressed either in the State or national Constitution. Express provisions of that nature may be found in the local constitutions of many States; and have proved a source of practical difficulties for legislatures and courts. They are not found in our own, which assumes that experience has taught that the power of taxation cannot safely be cabined within a theory of uniformity and equality. Taxes to be both uniform and equal affecting each inhabitant in proportion to his ability to contribute, can only be devised by a government unhampered by the limitations of humanity. With the complications of civilized society, the stress of taxation is not, and cannot be confined to the individual who pays the tax, its ramifications are widespread, and hidden. This and other considerations forbid the assertion of any specific theory as essential to just taxation. It is true that it is the interest of every government that the burden of taxation should be distributed fairly
41 and equally, and that it is the duty of the department in which the taxing power may be vested to honestly use its best judgment to secure such result. If this is what is meant by uniformity and equality being of the essence of taxation the saying is correct although unfortunately expressed. But the assertion that a violation of the legislative duty of fair and equal taxation under a Constitution like our own, inherently involves a violation of that Constitution, by an overstepping of the limits of legislative power, is not true. If a broad expression of the above principle is desirable, it may more properly be stated thus:—Justice and equity in the stress of the whole burden is inherent in taxation and the power of accomplishing that result is vested with the power of taxation in the legislature, subject only to restrictions specified in the grant of that power and to the general limitations placed by the Constitution on the exercise of all legislative power. But it is unwise to limit the principle by the terms of any authoritative formula.

Is this maxim necessarily implied from any provisions of our fundamental law? Unless the vague notion of a higher law is claimed as a constitutional provision we are pointed to no provision nor to any combination of provisions from which it is claimed that such a maxim is a necessary implication. To controvert a claim which rests on no definite propositions is ordinarily like fighting the air. But fortunately in this case the task of proving a negative is not difficult. The provisions of our Constitution exclude the possibility of a limitation of legislative power by an implied mandate that taxation shall be equal and uniform.

It is impossible to study the development of our law dur-
42 ing two and a half centuries, without reaching the certain conclusion that the rights of the people to tax themselves through the representatives in the General Assembly has always been held in reverence, and is distinctly secured by the Constitution; that the duty to exercise the power of taxation wisely and only for the public good is a legislative duty for the performance of which the General Assembly is responsible to its constituency; that the power of considering the conditions of population or property, the theories and maxims of political economy or moral philosophy which

may affect taxation and of determining what on the whole is a wise and fair mode of distributing the burden, is a purely legislative power and that the judicial department is by express provision of the Constitution forbidden to exercise that power. Such provisions are incompatible with the existence in our State constitution of any maxim of uniformity and equality in taxation to be defined by the court and employed in controlling the General Assembly in the performance of its legislative duties and the exercise of its legislative powers.

In our national Constitution we find provisions even more pointedly clashing with such a maxim. The power of taxation is granted to Congress in the broadest terms. There are two express limitations as to the manner of exercising that power and these limitations without referring to others necessarily exclude the application to all taxes of any rule of "uniformity and equality." One applies to "direct taxes" and the other to "duties, imports, excises." If any mode of taxation can be conceived which does not come within the meaning of this designation of two kinds of taxation, the exercise of that mode is unlimited.

43 "Direct taxes shall be apportioned among the several States which may be included within this Union" in proportion to the census directed to be taken. By this positive mandate any rule of equality in laying direct taxes is rendered impossible. The citizens of different States, if thus taxed at all, must be taxed unequally. "All duties, imports and excises, shall be uniform throughout the United States." This mandate is plainly geographical, demanding uniformity of rate in all places, but not uniformity of operation, and practically forbids the effort to secure uniformity of operation in laying indirect taxes. And so by force of specific commands the theory that equality and uniformity are essential to taxation is ignored. It is unnecessary to dwell upon the reasons for these provisions; they are familiar to all. But the significant fact is the clear declaration of the sovereign will that in exercising the power of taxation, considerations of public policy must dominate. In certain vital matters affecting the relations of different States to each other and to the General Government, these considerations of policy are fixed by the sovereign will, but in all other respects they are committed with the power of taxation to the Congress; and whether fixed by the Constitution or left to Congress these considerations are the masters not the servants of theories of uniformity and equality.

The Federal courts have had occasion to discuss this matter of "equality in taxation" in two classes of cases. One arising in States whose local constitutions contain some express phrase of that kind, and one arising from the construction of the national banking law. In both classes the court is called upon to deal with the purely judicial question of the interpretation of language

44 used, and in the former has been obliged to struggle with the problem of discovering distinctions that may save the taxing power from serious paralysis. In some instances these discussions have taken a wide range; but in all the considerations entertained

are firmly tied to the question before the court, that is, the meaning of language used, in one case in a State constitution and in the other in an act of Congress. But quite recently the specific claim that the U. S. Constitution contains some rule or principle of equality and uniformity of operation in taxation has been brought before the U. S. Supreme Court and decided. Knowlton *v.* Moore decided May 14th, 1900. In the careful-considered opinion in this case delivered by Mr. Justice White, the court, after long deliberation and with a single dissenting vote, holds that the provisions of the Constitution are inconsistent with the existence of a theory of equality in taxation, which the judicial department is empowered to define and impose upon the legislative. The case arose under the war-revenue act of June 1898 imposing tax on legacies. The act provided that when by the same will legacies of different values were bequeathed to different persons strangers in blood to the testator, the tax on one legacy might be 5 % of its value, on another 7½ per cent., on another 10 per cent., on another 12½ per cent., and on another 15 per cent. This tax was uniform only in a geographical sense, and its patent and "profound inequality" can be defended as just only on considerations of public policy. The precise claim was, that this whole scheme of taxation was grossly unequal, and therefore was not within the taxing power of Congress as granted and limited by the Constitution. The power of State legislatures whose State constitutions contain some express provisions requiring uniformity and equality in taxation to impose such unequal taxation had previously been sustained on the theory of a distinction in the right of property as recognized and protected by the State, between the right to make a transfer of property to take effect before death and one to take effect after death. It is thus stated in Magoun *v.* Ill. Trust and Savings Bank 170 U. S. 283, 288. "The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege; and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the State may tax the privilege, discriminate between relatives, and between these and strangers and grant exemption and are not precluded from this power by the provisions of the respective States' constitutions requiring uniformity and equality of taxation." Therefore the power of legislatures to tax legacies is less trammeled and "disenthralled from limitations which would otherwise apply, if the privilege of regulation did not exist." How far such a distinction as applicable to the power of taxing may result from the impracticable nature of such requirements in the State constitutions is not material; the distinction has no application to the power of Congress. In Knowlton *v.* Moore the court holds that the tax in question is one on the transmission and receipt of property by death which is as common and legitimate a subject of taxation, as any other transmission of property, or as property itself, and says—"Of course, in considering the power of Congress to impose death duties, we eliminate all thought of a greater privilege to do so than exists as to any other form of taxa-

tion, as the right to regulate successions is vested in the
46 States and not in Congress." And so the precise question whether the U. S. Constitution forbids inequality in any form of taxation was presented in a mode the most concrete possible, and decided in the negative. Still the question whether any particular form of taxation is more just and equal than some other is a question that must be decided; but not by the judicial department. As to this the court says, "in the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial."

Is it so then that the legislature may make any exaction it pleases under the form of a tax? Clearly not. The legislative power in all its manifestations is limited, including that of taxing, which however from its inherent nature approaches more nearly to arbitrary power. If a tax is laid on the exercise of the duty of voting, or if any exaction is put in the form of taxation as a mere sham and is in effect and purpose a denial to one of the enjoyment of rights indicated in the Constitution, and the enjoyment of which it secures equally to all, or is a seizure of the property of one for the benefit of another, or is an uncompensated confiscation of property, the law authorizing such exaction is in violation of mandates contained in our constitution, and probably in all American constitutions, and is therefore void. It is neither taxation nor legislation. Such guarantees are not limitations on the power of taxation, but on all power. It is immaterial in these cases whether the exaction, if it could be considered merely as a tax, is wise or foolish, oppressive or just, equal or unequal; the law is not a law solely because it is forbidden by some command of the supreme law. The meaning and scope of these commands present questions on which
47 the judgments of the judicial department are final; the wisdom or necessity of distributing the burdens of taxation according to rules of equality present questions on which the acts of the legislative department are conclusive.

We see no escape from the conclusion that our fundamental law, either State or national, contains no provisions either expressed or implied that "taxation must be equal and uniform," and the question seems to be set at rest by the decision in Knowlton *v.* Moore.

The claim, however, is urged that the 14th amendment and sec. 2 of art. IV of the U. S. Constitution contain certain provisions inferentially inconsistent with the particular taxation now under discussion. In order to deal with that claim it is necessary to keep in mind the precise nature of this taxation.

The main burden of taxation for municipal purposes falls upon inhabitants of towns proportionally to their ability to contribute to public burdens. Their ability to contribute is determined by lists, prepared under authority of each town, setting to each inhabitant certain sums, according to rules more or less arbitrary, fixed by the legislature. The gross amount of these sums measures the ability of each inhabitant to pay, and taxes are imposed by all municipal corporations authorized to lay taxes, upon the individuals according to their ability to pay thus measured. The rule of measurement was formerly largely arbitrary but as now fixed by the legisla-

ture is substantially the present fair market value of property owned both real and personal. This rule of taxing inhabitants of towns as individuals according to their ability to contribute, measured by legislative rules, was adopted in 1650 and still prevails as to municipal taxation and to a limited extent as to State taxation. Yale University *v.* New Haven, 71 Conn., 316,
48 330. When in later years local business came to be carried on by corporations rather than individuals or partnerships, a similar rule was applied in taxing such corporations. When banks were first chartered in 1792, a different rule became necessary as to them, which has since been applied to other corporations of similar character whenever chartered. As the burden of municipal taxation fell on towns, and as the inhabitants of a large number of smaller towns were proportionally less able to bear their burden than those of larger towns. The legislature sought to give to these smaller towns in the preparation of their tax-list, the benefit of all property that could be considered as increasing the ability of their inhabitants to pay; and this desire to relieve small towns from a practically unfair share of burden has influenced our whole system of taxing corporations. While banks were located generally in the larger towns their property was equitably owned by individuals residents in many other towns, and so instead of taxing the banks directly, the shares of their stock were treated as distinct personal property and were listed to the individual owners in the towns of their residence. Still later when corporations such as railroads, savings banks and mutual insurance companies came into existence, it was found impracticable to accomplish fair results, by taxing them under existing rules, and as to them still another rule was adopted *i. e.* that of special taxes by which the legislature taxed the corporation directly for the support of the State government, fixing the sum to be paid first by an arbitrary rate fixed by the legislature, and second by an arbitrary ascertainment of a sum which might be considered as approximating the value of the property owned. And these two factors *i. e.* the rate and the
49 sum to which the rate applies, are arbitrarily determined by the legislature, having regard in fixing each to the other, with the intent that the result shall be a fair and just tax. It was early found that these two modes *i. e.* that of taxing share as the distinct property of the individual owner, and that of special taxes must be combined in the taxation of banks and similar corporations. Shares of stock owned by non-residents of any town could not be listed as the personal property of an inhabitant of any town; and for a time the corporations in respect to shares so owned escaped all taxation. Eventually a special tax was laid upon the corporation in respect to these non-resident shares. Like other special taxes, the amount of the tax depends on two factors *i. e.* the rate and the sum on which the rate is laid, arbitrarily fixed by the legislature having regard to the other in fixing each. As such non-resident shareholders would otherwise substantially escape that contribution to the taxation of the corporation which is forced from the resident shareholder the law also compels them proportionally to the num-

ber of their shares to reimburse the corporation for the special tax so paid in respect to their shares.

It follows that in taxing one class of corporations, the law divides the members of the corporation into two classes, one consisting of shareholders whose property rights can be listed for municipal taxation in the towns of their residence, and the other of those whose property rights cannot be so listed; that it recognizes a similar distinction in the corporate property and interests which belong to the members who constitute the corporation; that the corporate property and interest represented by the former class of members
50 is subjected to municipal taxation and exempted from special taxes, and that represented by the latter class is exempted from municipal taxes and subjected to special taxation; that the portion represented by municipal shareholders is taxed under rules governing rate and sums to which the rate applies, including valuations, determined by the necessities of municipal taxation, and that the portion represented by the State shareholders, is taxed under different rules determined by the necessities of special taxation; that all taxes thus laid are to be paid by the shareholders proportionally to the number of shares respectively owned by the members of each class, in one case through the form of a tax as on distinct personal property, and in the other through the form of reimbursing the corporation for an expense which properly belongs to the shareholders on account of whom it was incurred.

The precise thing therefore claimed as void is,—treating the members of one corporation together with the proportional part of the corporate property pertaining to them as members, as forming two classes, and subjecting one class to municipal taxes only, and the other class to State or special taxes only and fixing the amount to be contributed to these diverse objects by members of one class under rules which necessarily differ in form from those applicable to the other. We have seen that such taxation is not void, because it may be regarded as neither uniform nor equal, nor because it may seem to the judges of this court to be unfair and unjust? Veazie Bank *v.* Fenno, 8 Wall. 533, 548. The only remaining claim is that for some other reason it is in violation of the constitutional provisions mentioned.

The 14th amendment seeks to add the security of national protection to the two guarantees common to the State constitu-
51 tions by which life, liberty and property are free from invasion, except under authority of law consistent with the Constitution, and by which any person or class of persons within State jurisdiction is secured against hostile discrimination in providing equal protecton under the law in the enjoyment of rights belonging to all. It was not intended to otherwise affect the existing control of States over the civil rights of its citizens. U. S. *v.* Crinkshank 92 U. S. 542, 554; Mo. *v.* Lewis 101 U. S. 22, 31; Bill's Gap R. R. Co. *v.* Penn 137 U. S. 232, 237.

The occasion, purpose, scope, and effect of the 14th amendment were authoritatively stated by the U. S. Supreme Court speaking through Justice Miller, shortly after the adoption of the last three

amendments, Slaughter-house cases, 16 Wall. 36. The underlying thought of the opinion in that case has never been intentionally departed from; and in a very recent case has been deliberately affirmed by the same court in an opinion delivered by Mr. Justice Peckham, reviewing adjudications of the intervening 27 years. Maxwell *v.* Dow, U. S. Supreme Court, Feb. 26th, 1900. The reasoning of these two leading cases excludes the idea of the 14th amendment placing any new limitations on the power of the people of the States to determine their civil rights by their fundamental law, unless in the hardly thinkable case of a rescission of the guarantees relative to the supremacy of the law of the land and equality in the enjoyment of constitutional civil rights. If then, the legislation complained of is invalid as invading any civil rights secured by our Constitution and thus deprives the defendant's shareholders of property contrary to the law of the land or is otherwise obnoxious to these guarantees, it may violate the provisions of the 14th amendment; otherwise it does not.

52 It would seem idle to claim the invasion of any such right, unless the right to "equal and uniform taxation" is one. Our fundamental law establishes no such right. And so the appeal to the 14th amendment fails by reason of the primary error of supposing that our constitution contains such a maxim. The constitutions of other States contain a maxim of that kind, and in these States a legislative act imposing an unequal tax on any one is not law; and therefore the collection of such tax might be the seizure of property without due process, *i. e.* contrary to the "law of the land," or, the imposition of such a tax on one person or a select number of persons might invade the right to equal protection of this unconstitutional exemption from such taxation; and so be a violation of the 14th amendment. That such taxation comes within the purview of this amendment solely by force of an express prohibition of the State fundamental law, (unless indeed the legislative act is not really one of taxation, but in effect and purpose an act of confiscation or in other ways a direct assault upon some limitation of the constitution affecting all legislative power) is illustrated by the cases cited.

Whatever extension may properly be given to the provision which forbids the denial by any State to any person or selected number of persons within its jurisdiction of equal protection in the enjoyment of those civil rights secured by its fundamental law to all citizens, it cannot cover the establishment by this amendment of a constitutional rule of "equality in taxation." The broad dictum of the U. S. Supreme Court speaking by Justice Miller, that while State constitutions may contain provisions against unequal taxation "the Federal Constitution imposes no restraints on the States in
53 that regard" (Davidson *v.* New Orleans 96 U. S. 97, 105) has been fully confirmed by the logic of recent decisions.

Another line of cases culminating in Maxwell *v.* Dow *supra* brings into sharp relief the impossibility of inferring from the provisions of the 14th amendment any maxim of "equality in taxation."

It was claimed that the 14th amendment imposed upon each State

the limitations of power imposed upon the U. S. by the first eight amendments. This claim had been denied in several decisions, and in Maxwell *v.* Dow it was held that the State of Utah through its local constitution could deny to every one within its jurisdiction the common-law right of trial by jury, and such denial was not obnoxious to the 14th amendment, which acted on fundamental rights as they existed ine ach State. The right of trial by jury, until recent years, has been generally regarded as the most essential of those secured by the muniments of English liberty; with other rights protected by the first eight amendments it forms the body of "privileges and immunities," which our American constitutions have in general placed beyond the reach of legislative power. "Equality in taxation" finds its source as a fundamental maxim in the brilliant speculations of the encyclopedists formulated into a declaration of the "rights of man" and adopted by the revolutionary assembly of France in 1789. The proposition that the 14th amendment gives the national protection to the equal enjoyment of civil rights as established in each State, and should not be extended by inference is demonstrably sound; and this being so, through what considerations of public policy or by what process of reasoning can
an inference be drawn which leaves the right of trial by jury
54 subject to the control of the State sovereignty and places the
theory of "equality in taxation" beyond its power; which holds that sovereignty competent to define and alter the hard-won civil rights of freemen as embodied in the petition of rights, the bill of rights, our local and national declaration of rights, but powerless to reject the theories of doctrinaires, embodied in the "rights of man"?

The defendant's claim of a special violation of sec. 2 of art. IV of the U. S. Constitution is greatly narrowed by the elimination of his initial error of treating the maxim "Taxation must be equal and uniform" as a mandate of our fundamental law. If the defendant were right as to the existence of such a mandate, then exemption from unequal taxation might be considered a civil right or "privilege" secured by our constitution to every citizen of this State, and a law which deprived citizens of other States of that privilege might be treated as obnoxious to this particular clause. But the claim being untenable, the clause has no application unless the legislation in question deprives citizens of our sister States of some other privilege and one to which our citizens by virtue of their citizenship are entitled. The mere fact of discrimination is immaterial. The exercise of the legislative function necessarily involves discrimination. While discrimination in itself may be harmless, it does sometimes serve to mark the character of legislation. Thus a law purporting to be a police regulation may by reason of its discriminations, be shown to be a regulation of commerce. So a law purporting to be mere taxation, may by the nature of its discrimination be shown to be in fact a deprivation of citizens of other States of some civil right secured to our own.

"The citizens of each State shall be entitled to all privi-
55 leges and immunities of citizens in the several States." The
meaning and effect of this language in substantial particulars

is settled. It is confined to the single purpose of preventing an exercise of the independent power left to each State in favor of its own citizens in respect to their common personal rights as citizens and against a participation in the same rights by citizens of other States. "Privileges and immunities" are those civil rights belonging to all citizens of the State. Corfield *v.* Coryell 4 Wash. C. C. 371; Slaughter-house cases *supra;* Blake *v.* McClung 172 U. S. 239; Maxwell *v.* Dow *supra;* Lemmon *v.* People 20 N. Y. 562. They are not special privileges such as any State may grant to portions of its citizens, but those "which are common to its citizens under its constitution and laws by virtue of their citizenship." Pembino Mining & Milling Co. *v.* Penn 125 U. S. 181. The discrimination must be personal. Shipper *v.* Penn. R. R. Co., 47 Penn. 338, and against citizens of another State as natural subjects of that State, and so corporations cannot be citizens within the meaning of the clause. Ducat *v.* Chicago 10 Wall. 410. To render a State law obnoxious to this clause, it is essential 1, that the privilege claimed by the citizen of another State should be a civil right common to the citizens of the enacting State. 2. That the privilege claimed should be denied to a natural citizen of another State in his capacity as such citizen. The legislation complained of does not come within either of these requirements. The "privilege" claimed is under our tax legislation, and must be one of the following:—The right of all citizens of this State, being members of a State corporation to be taxed in respect to their interests in the corporation. 1, for the same objects of taxation, or, if taxed for
56 differing objects, 2, by the same modes of taxation, or, if
" taxed for differing objects and by different modes, 3, by the same rules of valuation and 4, to a gross amount of taxation which shall be the same for each member in proportion to his interest. Neither our legislation nor our constitution entitle our citizens to such rights. The distinctions made by our law are within the legislative power of taxation, and their wisdom, or folly cannot present a judicial question. It may be noted in reference to the 4th, privilege claimed that equality in the gross amount of taxation falling upon two classes of shareholders taxed under our law for the differing objects of municipal taxation and State taxation is impossible and the different modes of taxation are adopted with a view of roughly obtaining some equality which cannot be so nearly approximated in any other way; and it may be further noted that the taxation is not claimed to be oppressive, indeed it was urged in argument that the stress of taxation falling on this defendant and its stockholders is far less than that falling on other corporations transacting a similar business. All these claims resolve themselves into the one claim of a fundamental right to the application of a theory of uniformity and equality in taxation.

If the defendant is treated as representing its "non-resident" shareholders, there is no discrimination against them in their capacity as "citizens of other States." The discriminations are between members of our State corporations by reason of their participation in its grant of corporate franchise. In accepting the rights of prop-

erty inherent in that grant, they voluntarily put themselves for purposes of taxation under our jurisdiction. The State discriminates
57 in the manner of compelling members of a corporation to share the gross amount which the corporation should contribute under all forms of taxation by reason of the property created and accumulated and privileges enjoyed through the State's grant of incorporation. The obligation of the members to submit to such discrimination, is an incident to their acceptance and enjoyment of the grant. Shares of stock in the hands of the shareholders may be treated for certain purposes, including some forms of taxation, as a property distinct from that of the corporation, but nevertheless the real interest of the shareholder is a corporate interest and one element of the taxation the State may impose on the corporation. The Delaware railroad tax 18 Wallace. 208. It may assess the shares and compel the corporation to pay the tax. Nat. Bank *v.* Com. 9 Wall. 353, 363; Tappon *v.* Merchants' Bank 19 Wall. 490, 500. Chief Justice Waite speaking for the court, stated the principle thus: "That in corporations four elements of taxable value are sometimes found; First, the franchise; second, the capital stock in the hands of the corporation; third, the corporate property; and fourth, the shares of capital stock in the hands of individuals stockholders" Tenn. *v.* Whitworth 117 U. S. 129, 136; Farrington *v.* Tenn. 95 U. S. 687. The State may tax one or all these elements and discriminate in the taxation, unless restricted by some special constitutional provision. It is held that where the Constitution forbids unequal taxation, the State may nevertheless discriminate in the taxation of those rights of property growing out of an exercise of its power to regulate the law of succession and wills; *a fortiori*, the State may prescribe the terms on which rights of property growing out — its grant of special corporate privileges may be enjoyed. In the law complained of, in so far as it taxes a
58 corporation on account of the interest of its non-resident shareholders, the whole force of "non-resident" as used, is to designate such persons as by reason of their non-residence in some particular town, cannot be listed for municipal taxation. It is the same purpose and effect as if the law had directed the stock of all shareholders resident in towns having a grand list of less than $5,000,000 to be subjected to municipal taxation in the town where the owner resides, and directed the corporation on behalf of all non-residents of such towns to pay a tax to the State of one per cent. on that portion of its franchise and property exempted from municipal taxation and represented by the interests of said non-resident shareholders, the amount of that portion to be ascertained in any manner the legislature might deem just. Such a law would not discriminate against citizens of other States in their capacity as such citizens and just as clearly, under any fair reading of our legislation, the existing statute does not so discriminate.

The distinction between this case and others where this clause of the constitution has been applied to taxation is broadly marked. In all others there was an invasion of that right of every one secured in the State constitution to freedom of harmless action in respect to

person and property, equal before the law, to that enjoyed by all other citizens under the same conditions and in the same circumstances. The discrimination was not a mere incident of legitimate taxation, but one aimed directly at citizens of other States, calculated and intended to deny or limit as to them a clearly defined civil right. We believe the right to equality of privilege in all members of a corporation under the grant of corporate franchise is not secured in any constitution; certainly not
59 in our own. In Ward *v.* Maryland (12 Wall. 418) the right to freedom of occupation was invaded by a discriminating tax against non-resident traders. In Blake *v.* McClung (172 U. S. 239) the same right was invaded by a law preventing creditors, citizens of other States in sharing equally with those of Tennessee in the distribution of an insolvent estate of a Tennessee citizen. "Certain creditors, solely because of their being citizens of Tennessee are accorded advantages in the distribution of the assets in question which are denied to other creditors, solely because of their being citizens of another State than Tennessee." S. C. decided Jan'y 8th, 1900. The same distinction appears in the State cases cited. In Sprague *v.* Fletcher 69 Vt. 69, the equality of right, as above defined, in the enjoyment of tangible property was claimed to be invaded; without stopping to investigate the application, the principle sought to be applied, is similar to that in the Federal cases. In Farmington *v.* Downing 67 N. H. 441, there is the further distinction that the New Hampshire constitution contains a clause forbidding inequality in taxation; and the case involved the interpretation of the enabling act of Congress. The invalidity of the N. H. law in this particular was not fully considered, as the case had to be disposed of on other grounds, Oliver *v.* Washington Mills 11 Allen 268 turns on the fact that the thing taxed was tangible property situate in Massachusetts. The conclusion of the court that a dividend after declaration and before payment is a "commodity" belonging personally to the shareholder the same as his money in the hands of any agent, is the foundation of the opinion. The validity of the State law was claimed whether it were considered as imposing a tax or an excise duty. The court held
60 it void from either point of view. If a tax, it violated the Mass. constitution forbidding unequal taxation; if an excise, it was laid solely on citizens of other States on account of such citizenship and so denied to them a privilege or civil right secured to its own citizens. We have been referred to no case where a State law has been held void as violating the provision that "citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," unless the "privilege" was a civil right belonging to all citizens of the enacting State; and the law discriminated against citizens of other States in their capacity as such citizens.

But it is urged that ownership in a share of stock is practically of the same nature as ownership of bonds or debts or even of tangible property; that our tax law practically affects individuals as directly as a tax on their tangible property; that for all practical

purposes in adopting a different mode of ascertaining the tax to be collected for shares of residents and non-residents, the law imposes a larger tax upon citizens of other States than upon our own citizens; and that under the form of corporate taxation, the law in reality and intent discriminates against citizens of other States in *respect to that individual equality before the law secured to our* own citizens. If in fact our law is a mere sham devised for the sake of screening an actual purpose of excluding citizens of other States from participation in those civil rights secured to our own then we cannot sustain the law. The light of justice can pass unimpeded through all the coverings of form and lay bare any hiding substance of disobedience to paramount law. When occasion
61 demands, the court cannot shrink from its duty in discovering the real purpose of any legislation; on the other hand it is worse than folly to apply the microscope to the tangled web of taxation seeking some broken threads that may suggest a defective origin.

It is not, however, true, in the sense suggested, that ownership of a share of stock is practically of the same nature as ownership of tangible property; the latter rests upon a right universally recognized from earliest time which is common to all, and secured in its enjoyment by constitutional guarantees, while the latter is of comparatively modern origin, dependent for its existence upon a legislative grant of special privileges to a few, subject in this and in most cases to alteration and repeal. It is true of all corporate taxation that it affects individuals directly, whether it is collected from the corporation before the declaration of a dividend or afterwards from its members, and it may be true that under the latter mode individuals are affected more directly, but this does not alter the fact that in prescribing the mode of taxation in question the State is exercising its power of limiting the conditions on which the grant of corporate franchise may be enjoyed. While under this mode of taxation a heavier burden may fall on some who are citizens of other States than upon some who are citizens of this State, as a heavier burden may fall upon some than upon others of our own citizens members of the same corporation, yet it does not appear from the record that the effect of the law as a whole is to impose a larger tax upon citizens of other States than upon our own.

We see nothing in this legislation to furnish any justification for the claim that it is in form only a permissible mode of cor-
62 porate taxation, but in purpose and effect is a hostile discrimination against citizens of other States in the enjoyment of property rights common to all; unless it be in a provision contained in sec. 3836 of Gen. Stat. The provision was first enacted in 1877. For a long period prior to that time, the law taxing banks, insurance Cos. and other corporations treated the shares owned by residents of towns as a property distinct from that of the corporation, and directed the assessors to list such shares at the market value thereof on Oct. 1st, to the owners like all other personal property; and directed the cashier or secretary of every such corporation to make a return to the assessors of each town informing them of the

names of shareholders resident in that town, of the number of shares held by each, and the market value thereof during the preceding month. The law also laid a special tax in respect to shares owned by non-residents of towns whose amount was arbitrarily determined, as before explaind, by a valuation measured by the market value of the stock on October 1st, and a legislative rate of one per cent., now fixed at one and one-half per cent. In 1877, the legislature in re-enacting the law directing assessors to list the shares of resident shareholders at their market value, added the following proviso,— "but so much of the capital of any such company as may be invested in real estate on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors." This proviso is the provision sec. 3836 in question. The plaintiff claims that the provision applies only to the information to be included in the returns of the corporations to the assessors to aid them in listing the property owned in their town and in fixing
63 the market value thereof on October 1st, and does not otherwise affect the duty of the assessors to list all such stock at its market value. In the preceding case of Chase's appeal, 73 Conn., the provision is construed as controlling the action of the assessors.

The defendant claims that the provision thus construed is equivalent in meaning to an enactment that "owners of shares of stock in corporations paying taxes on land in which their capital is invested shall be entitled to a deduction from the amount of their assessment for taxation of a sum for each share owned equal to the assessed value of the corporation's land divided by the whole number of its shares; but citizens of other States shall not be entitled to such deduction from the assessment for taxation of shares owned by them." It is unnecessary to consider what might be the effect of the provision if it expressed this meaning; for such is not its meaning. We have held that the provision thus construed is not a direction to the assessors to make an arbitrary deduction from the amount of the shareholder's list, but is a direction to make a different valuation so that the statute in respect to corporations owning taxable real estate, no longer treats the shareholder as owner of a piece of property distinct from that of the corporation, but treats him as owning an interest in a proportional part of the capital of the corporation *i. e.* of the assets representing the amount of the original capital and profits in excess of existing debts, and therefore in the valuation of this property for municipal taxation a deduction shall be made of the capital invested in land already taxed in this State and elsewhere, and the sum to be deducted must bear the same relation to the shareholder's interest in the taxable value of the
64 real estate as the market value of his share bears to his interest in the actual value of the assets in excess of existing debts. Batterson *v.* Hartford, 50 Conn. 558, 561; Dennis' appeal and Batterson's appeal, 72 Conn. 359, 375.

This change as to the valuation of the property and franchise of a corporation owning taxable real estate, for the purposes of municipal taxation, may produce in some instances more inequality, may be uncalled for or unwise (upon such considerations the action of

the legislature is conclusive) but it certainly does not transmute the legislation in question from permissible taxation to a denial to citizens of other States of that common right in the use and enjoyment of property secured to our own citizens. The plan of taxation remains the same; after as before the change in valuation, it is simply a mode of securing to towns for purposes of municipal taxation the benefit of that part of the corporate property represented by shares owned by their inhabitants and subjecting to State taxation that part represented by shares owned by non-residents, and which cannot be thus subjected to municipal taxation. Here is no hidden purpose to attack the rights of citizens of other States, no evidence that the underlying intention and real substance of the legislation is to hinder citizens of other States in acquiring and holding property. The alleged hindrance is confined to those who buy stock in corporations paying taxes on real estate. Only a small number of the corporations within the scope of the act own taxable real estate to any appreciable amount; can it be said that the law regulating the taxation of half a dozen different kinds of corporations is really intended to hinder citizens of other States
65 from owning stock in the small number of these corporations that may from time to time invest in taxable real estate, or, that the real substance of the law changes from legitimate taxation to hostile and forbidden discrimination with each change of its investments by a corporation? Clearly the legislature is free from any sinister motive in this legislation. Nor in its practical effect does the law justify the charge. The claim here is that non-resident shareholders pay a larger tax than residents. This in itself means nothing. The plan of taxation includes a tax as to the two classes of corporate property for different purposes, whose amount is to be ascertained in a different manner; it necessarily involves inequality in the contributions of members of the corporation for corporate taxation; inequality in the gross amount falling upon the two classes, and inequality in the several contributions of members of the same class; it necessarily rejects a theory of uniformity. This the legislature may do; the claim now under consideration is that in doing this the legislature has produced such a gross inequality between the two classes as in purpose and effect constitutes a denial or hindrance to citizens of other States in the enjoyment of property rights common to all, and secured to our own citizens. It is unnecessary to consider whether, or under what circumstances, the limitations imposed by a State in respect to the mutual relations of members of its corporations in the matter of taxation may transform legislation for that purpose into a denial of rights secured to citizens of other States; it is enough for present purposes that a mere inequality in the stress of taxation cannot produce that effect. But the claim that in this case the inequality operates against non-residents or citizens of other States as a class is unfounded. While the admissions of the demurrer assumed the tax in respect to the defendant
66 for this year to bear more heavily on non-residents than on residents, the general effect of the law is matter of common knowledge. The average rate of taxation for municipal purposes

for the 168 towns, approximates 15 mills, which is the rate for the special tax imposed in respect to non-resident shares; but the average rate for municipal taxation in the ten larger towns (representing much more than half the grand list of the State) is about 21 mills. The clear purpose of the legislature in fixing the mode of valuation for the property subject to a single rate for special taxation and the valuation for the property subject to wider varying rates for municipal taxation, was to approximate a general equality in the burden that should fall on the two classes of property; and it well may be that the rule objected to in respect to the valuation of the interests of resident shareholders in corporations investing in taxable land. Still leaves as a whole, a lighter burden of contribution resting upon non-resident shareholders.

There is no more in this last than in the other claims of the defendant, unless our Constitution requires uniformity and forbids inequality in taxation. Our fundamental law, State and national, contains no such mandate or maxim. Eliminating from the discussion the notion that some theory of uniformity and equality in taxation constitutes a limitation on legislative power and confers upon the judicial department authority to supervise the legislature in the performance of its legislative duty of fairly and wisely distributing the burden of taxation; it seems to us apparent that our plan of taxing corporate property and franchise, first adopted more than half a century ago, and in force in its present form for some twenty-five years, is constitutional, and is not obnoxious
67 either to sec. 2 of article IV nor to the 14th amendment of the U. S. Constitution.

If a change is desirable it may be feasible to preserve to towns the income now derived from taxes on the stock of their resident shareholders, and to collect all forms of corporate taxation from the corporation, thus distributing the burden proportionably among its members. The wisdom of any change must be determined by the legislature.

We have not considered the question, whether it is competent for the defendant in this action to make the claims presented on behalf of its non-resident shareholders. In assuming, as the parties have, that such claims are properly presented, we wish to exclude from any implication of settlement, some nice questions that may be involved in the assumption.

There is no error in the judgment of the superior court.

In this opinion Andrews, C. J., Torrance and Hall, Js., concurred; Baldwin, J., concurred in the result but not in the opinion.

The foregoing is a true copy of the original opinion as filed with the reporter of the court; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JAMES P. ANDREWS, *Reporter.*

68 THE STATE
vs.
THE TRAVELERS' INSURANCE COMPANY.

BALDWIN, *J.* (concurring in the judgment, but dissenting from part of the opinion of the court):

The opinion of the court rests upon three propositions to which I fully assent. These are, that there is nothing in the constitution of Connecticut, nor in the 14th amendment to that of the United States, which either expressly or by implication requires that all taxation by this State shall be uniform or equal; that there is no fundamental principle of free government or natural justice that all taxation shall be uniform or equal; and that a citizen of another State who participates as a shareholder in the defendant corporation in the enjoyment of a special franchise, granted by this State, with a reservation of the power of amendment or repeal at pleasure, is not deprived by the tax laws which are in question in this cause of any privilege or immunity, coming within the meaning of art. 4, sec. 2, of the Constitution of the United States.

I dissent from so much of the opinion as asserts that if it were a fundamental principle of free government and natural justice that all taxation shall be uniform and equal, the judicial power would be incompetent to declare a statute which violated that principle to be no law.

The constitution of Connecticut (art. 2) declares that "the powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; 69 and those which are judicial, to another." It then proceeds (art. 3) to vest "the legislative power of this State" in the General Assembly, and (art. 5) "the judicial power of the State" in this and other courts. This language assumes that a free State has a power of government known as legislative and another known as judicial.

The leading men among the framers of our Constitution were familiar with certain limitations of legislative power, described in the institutional works upon English law. That "if a statute be against common right or reason * * * the common law shall control it and adjudge it void" had been laid down in Bacon's Abridgement (statute, A, 12, 13, 14), repeating the words of Coke in his report of Bonham's case (8 Rep. 118). So in Wood's Institutes (p. 10) it had been stated that "acts of Parliament that are against common justice and reason * * * shall be judged void." These principles had been acted upon by American courts. In the Symsbury case, in this State, it had been adjudged, in 1784, and again in 1785, that an act of our General Assembly to confirm a patent of lands it had granted, but which trenched upon the limits of a prior grant, was, so far as it did thus trench upon them, void, because it took the property of one man and gave it to another. Kirby, 447, 452. We then had no Constitution, unless it were the colonial

charter, and that contained no particular provision affecting
70 laws of such a character. In 1792, the supreme court of South Carolina had come to a similar determination, under like circumstances. Bowman *v.* Middleton, 1 Bay, 252.

This doctrine had not been universally accepted. Blackstone, so far as the powers of the British Parliament were concerned, had thrown the weight of his authority against it. In a cause taken up from this court to the Supreme Court of the United States, and familiar to every Connecticut lawyer in 1818, it had been, twenty years before, the subject of a difference of opinion between the justices of that tribunal.

Mr. Justice Chase had maintained that "the nature and ends of legislative power will limit the exercise of it," adding the remark that "an act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact cannot be considered a rightful exercise of legislative authority." Mr. Justice Iredell had taken the opposite view. Calder *v.* Bull, 3 Dall. 388, 398.

The question was debated before this court shortly after the adoption of our State constitution, and thoroughly considered, in an opinion by Chief Justice Hosmer, which received the unanimous assent of the court. His conclusion was that should the General Assembly pass a statute authorizing a direct and palpable infraction of vested rights, too unjust to admit of vindication, it
71 would be a violation of the social compact and within the control of the judiciary. Goshen *v.* Stonington, 4 Conn. 209, 225.

No Connecticut jurist has gone beyond Chief Justice Daggett in upholding the plenary authority of the General Assembly prior to the adoption of our constitution, but he, speaking for this court, defined it as "a legislative power capable of making all laws necessary for the good of the people, not forbidden by the Constitution of the United States, nor opposed to the sound maxims of legislation." Starr *v.* Pease, 8 Conn. 548.

The power of this court to declare a statute void which clearly abrogated vested rights because it would "stand opposed to the true spirit of the Constitution," was affirmed, though with cautious reserve, in 1843, in an opinion by Chief Justice Church. Bridgeport *v.* Housatonic R. Co., 15 Conn. 497. In 1856, it was discussed by Chief Justice Storrs, and the suggestion made that it could not exist when the power exercised was "properly legislative in its character." State *v.* Wheeler, 25 Conn. 297, 298. That by the expression "properly legislative in character was meant within the sphere of proper legislation, as that sphere may be finally determined, in case of controversy, by a consideration of the fundamental principles of civil government and natural justice, seems to be demonstrated by another case reported in the same volume, in which a legis-
72 lative grant of a corporate monopoly was adjudged void, in these words: "And although we have no direct constitutional provision against a monopoly, yet the whole theory of a free government is opposed to such grants, and it does not require even the aid which may be derived from the bill of rights, the first section of

which declares 'that no man or set of men, are entitled to exclusive public emoluments, or privileges from the community,' to render them void." Norwich Gas Light Co. *v.* Norwich City Gas Co., 25 Conn. 19, 38.

In 1861, we again deliberately recognized the general doctrine that a statute directly and unjustly impairing vested rights is void, not because of any constitutional provision, but as in violation of "the fundamental principles of the social compact" which, as we then said, through Chief Justice Butler, "underlie all legislation, irrespective of constitutional restraints." Welch *v.* Wadsworth, 30 Conn. 155. The same great judge soon afterwards stated, with his accumtomed clearness and precision, the foundation of the judicial power thus to declare, in extreme cases, a statute not to be a legitimate act of legislative power. The question then before us was whether the General Assembly could allow towns to vote bounties to men volunteering for military service in the field. "It must be conceded," he said, speaking for a unanimous court, "that the people, if convened and organized as a whole, and acting upon the fundamental principle that
73 what the majority prescribe shall be law, could be under no restraint except that imposed by the principles of natural justice; and the General Assembly in the exercise of that conferred legislative power, and irrespective of the bill of rights, are restrained by the same principles and no other. The first question, therefore, may be further narrowed to the inquiry, whether it is contrary to natural justice that A and B and the rest of the inhabitants of the State, should be taxed for gratitu-ties to C and D, when C and D are called upon to render military service to the General Government." Booth *v.* Woodbury, 32 Conn. 127, 128.

I believe that the doctrine of Goshen *v.* Stonington, since so often reaffirmed, is sound, and that the term "legislative power," as it is used in our American constitutions, refers only to what is "legitimate legislation." Bradley *v.* New York & N. H. R. Co., 21 Conn. 305; Wilkinson *v.* Leland, 2 Pet. 657. This is the view which was finally adopted and acted on by the Supreme Court of the United States in the leading case of Loan Association *v.* Topeka, 20 Wall. 655, 662, 663. If such be not the law, then the inadvertent omission in a bill of rights of any of the guaranties against oppression which are usually enumerated, would leave the citizen in that respect subject to the uncontrolled pleasure of the legislature. Our liberties are not, in my judgment, held on so precarious a tenure.

74 The importance of the point which has been discussed has seemed to me to justify this full statement of the reasons which lead me to dissent from what is said in regard to it in the opinion of the court. So far as I can discern, however, it has no importance in the cause, and has simply become the occasion of an *obiter dictum*. We all agree that the statutes in question are not unfair nor unjust. The counsel for the defendant, in their argument, rested their case on the effect of certain provisions of the Constitution of the United States. In the disposition which has been

made of the objections thus raised I fully concur. It seems to me, therefore, that it was quite unnecessary to consider whether, if the statute under examination had been flagrantly subversive of fundamental principles underlying our Constitution and characterizing all free governments, its operation could not have been controlled by that department of the Government in which the people have reposed all their judicial power.

The foregoing is a true copy of the original opinion as filed with the reporter of the court; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JAMES P. ANDREWS, *Reporter*,
Per W. E. OSBORN.

75 STATE OF CONNECTICUT, }
First Judicial District, County of Hartford. }

In pursuance of the command of the writ of error within, I, George A. Conant, clerk of the supreme court of errors of the State of Connecticut, within and for the first judicial district, and county of Hartford, in said State, herewith transmit the original writ of error, citation and officer's return thereon and assignment of errors and a true copy of the record of all the proceedings and judgment in said supreme court of errors, and of the opinion thereof, and of the dissenting opinion of Associate Judge Simeon E. Baldwin, and of the supersedeas bond in the case of State of Connecticut *vs.* Travelers' Insurance Company, lately pending in said supreme court of errors, under my hand and the seal of said court.

Witness my official signature, and the seal of said supreme court of errors, at the city of Hartford, in the county of Hartford, and first judicial district of the State of Connecticut, this 28th day of December, in the year of our Lord one thousand nine hundred.

[Seal Supreme Court of Errors, Conn.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors of the State of Connecticut in and for the County of Hartford and the First Judicial District.

Endorsed on cover: File No. 18,008. Connecticut supreme court of errors. Term No. 219. The Travelers' Insurance Company, plaintiff in error, *vs.* The State of Connecticut. Filed December 31, 1900.